

ATRIUM HOMEOWNERS ASSOCIATION DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 14th day of July, 1971, by NATIONAL BOULEVARD BANK OF CHICAGO as Trustee under Trust Agreement dated May 26, 1969, and known as Trust No. 3133 (the "Trustee").

WITNESSETH:

WHEREAS, Trustee is the owner of the real property (the "Properties") described in Article II of this declaration, and the beneficiary of the Trustee, Atrium Venture (the "Developer") desires to create thereon a residential community with private streets permanent parks, playgrounds, open spaces and other common facilities for the benefit of the said community; and

WHEREAS, Trustee and Developer desire to provide for the preservation of the values and amenities in said community and for the maintenance of said streets, parks, playgrounds, open spaces and other common facilities; and to this end, desire to subject the Properties to the covenants, restrictions, easements, charges and liens hereinafter set forth, for the benefit of the Properties and all owners thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an entity to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has caused or intends to cause the ATRIUM HOMEOWNERS ASSOCIATION to be incorporated under the laws of the State of Illinois, as a not-for-profit corporation, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Trustee declares that the Properties are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenant and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall otherwise require) have the following meaning:

- (a) "Association" means the ATRIUM HOMEOWNERS ASSOCIATION.
- (b) "Board of Directors" means the Board of Directors of the Association, as constituted at any time or from time to time.
- (c) "Common Properties" means those areas of land described as Private Road and as Block 11 on Exhibit A hereto and on the Plat of Survey dated December 13, 1971, revised April 7, 1972, made by Ciorba, Spies, Gustafson and Co. attached hereto as Exhibit B, and the water system and sanitary and storm sewer systems within the Properties.

The Common Properties may be supplemented from time to time hereafter by the execution by the Trustee and recording of Supplemental Declaration of Easements, Covenants and Restrictions describing additional Common Properties, which shall thereupon become subject to the terms and conditions of this Declaration. Thereafter the term Common Properties shall include such additional Common Properties.

- (d) "Townhouse" means each townhouse and other single family dwelling at any time situated on the Properties.
- (e) "Condominium Unit" means each condominium unit in a multi-family structure at any time situated on the Properties.
- (f) "Owner" means each record owner of one or more Townhouses or Condominium Units.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be, held, transferred sold, conveyed and occupied subject to this Declaration is located near the northwest corner of Roosevelt Road and Prospect Street, in Elmhurst, DuPage County, Illinois, and is more particularly described as follows:

Parcel 1: Lot 1 of Walter Swanson's Assessment Plat of part of the Southeast quarter of Section 14, Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded June 18, 1959, as Document 927711, in DuPage County, Illinois.

AND

Parcel 2: That part of the Southeast quarter of Section 14, Township 39 North, Range 11, East of the Third Principal Meridian described by commencing at the Southwest corner of said Southeast quarter and running thence East along the South line of said southeast quarter 113.35 feet for a place of beginning; thence North 2 degrees 06 minutes East in Salt Creek, 481.96 feet; then North 43 degrees 25 minutes East in Salt Creek, 124.28 feet; thence North 39 degrees 52 minutes East in Salt Creek, 167.07 feet; thence North 21 degrees 41 minutes West in Salt Creek, 215.11 feet; thence East 219.43 feet to the West line of Lot 1 of Walter Swanson's assessment plat aforesaid (being an old line of occupation) thence South 14 degrees 19 minutes East along said West line of Lot 1, aforesaid 928.85 feet to the South line of said Southeast quarter; thence West along said South line, 579.59 feet to the place of beginning, in DuPage County, Illinois.
All such real property is referred to as the "Properties".

ARTICLE III

OBLIGATION OF MAINTENANCE

The Association shall have the obligation to maintain the Common Properties, including without limitation, streets, storm and sanitary sewers, the underground water system, parking lots and recreational facilities, in good repair. The foregoing obligation may be enforced by Members of the Association or by the municipality in which the Properties are located.

ARTICLE IV

EASEMENTS FOR INSPECTION AND MAINTENANCE OF STREETS, STREET LIGHTS, UNDERGROUND IMPROVEMENTS, TREES AND SHRUBS; CONTROL OF WATER SYSTEM

Section 1. The City of Elmhurst shall have an easement to make inspections of the streets, street lights, storm and sanitary sewers and the underground water system (herein called the "Utilities") and the trees and shrubs located on the Common Properties, but shall not be obligated to make such inspections. If any such inspection shows that the Association has failed to maintain the Utilities in good repair, or has failed to maintain the trees and shrubs in conformance with the standards set forth in Section 2 of this Article, the City of Elmhurst may give written notice of such failure to the Association. The Association shall within 90 days after receipt of such notice (or within ten (10) days after receipt of such notice, in the event of a water leak, or immediately, in an emergency), commence to bring the Utilities into good repair, or the trees and shrubs into conformance with the standards set forth in Section 2 of this Article, and shall perform such work with reasonable promptness. If the Association fails to commence or perform such work as required by the preceding sentence, the City of Elmhurst may, but shall not be obligated to, perform such work, and in such event the Association shall reimburse the City of Elmhurst for the cost thereof promptly upon being billed therefor. The cost of such work shall, until paid, be a lien against the Common Properties, and a proportionate part of such cost shall be a lien on each Townhouse and Condominium Unit, which lien may be enforced by the City of Elmhurst in the same manner as the lien for assessments may be enforced by the Association pursuant to Section 7 of Article VI hereof.

Section 2. All trees and shrubs shall be free of dead and diseased matter. No shrubs located within 20 feet of any intersection of streets on the Common Properties shall exceed 3 feet in height.

Section 3. All water for use within the Properties shall be furnished by the City of Elmhurst, through the water system which will be owned by the Association. Water furnished to Townhouses will be metered separately for each Townhouse and charges for such water will be billed directly by the City of Elmhurst to the consumer. The City of Elmhurst shall have an easement over the Common Properties for the purpose of turning off water service of any consumer as a means of enforcing the collection of water charges. Neither the Association nor the owner of any Townhouse or Condominium Unit on the Properties shall have the right to use water from fire hydrants or any other unmetered sources.

Section 4. The City of Elmhurst at its cost shall have the right to attach extensions to the storm and sanitary sewers and the underground water system, provided that such extensions are consistent with good engineering practices.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article V every Owner shall have a right and easement of enjoyment in and to the Common Properties and such easements shall be appurtenant to and shall pass with the title to every Townhouse and Condominium Unit.

Section 2. Title to Common Properties. The Trustee may retain legal title to the Common Properties until such time as the Developer has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but the Trustee hereby covenants, for itself, its successors and assigns that it shall convey the Common Properties to the Association, free and clear of all liens and encumbrances, not later than April 30, 1977.

Section 3. Extent of Easements. The rights and easements of use and enjoyment created hereby shall be subject to the following:

- (a) the rights of the Developer set forth in Article IX; and
- (b) the right of the Developer and of the Association, in accordance with its Articles and By-laws, to improve the Common Properties. The right of the Association to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties, except that in the event of a default upon any such mortgage the lender's right thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued use and enjoyment by the members until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and the aforesaid rights of such lender shall terminate; and
- (c) the right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and
- (d) the right of the Association, as provided in its Articles and By-laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid; and
- (e) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties, and to make reasonable rules and regulations governing the use of the Common Properties; and
- (f) the right of the Trustee and the Association to grant easements to public and private utility companies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewer and water pipes, and other facilities; and
- (g) the rights of the City of Elmhurst set forth in Articles IV and VIII; and
- (h) the right of the Association, with the written approval of Owners who own 2/3 of the aggregate number of Town-

houses and 2/3 of the aggregate number of Condominium Units, to dedicate or transfer all or any part of the Common Properties to any public agency or authority, provided that written notice of the proposed action shall have been sent to every Owner at least 60 days in advance of any such action.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Townhouse or Condominium Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association, both before and after the conveyance of the Common Properties to the Association:

- (i) periodic assessments or charges, which shall be monthly unless otherwise determined by the Board of Directors;
- (ii) special assessments for capital improvements;
- (iii) an advance assessment equal to 3 months' periodic assessments;

such assessments to be fixed, established, and collected from time to time as hereinafter provided. The periodic special and advance assessments, together with interest thereon and costs of collection thereof as hereinafter provided shall be a charge and a continuing lien upon the Townhouse or Condominium Unit in respect of which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the owner of such Townhouse or Condominium Unit at the time when the assessment becomes due and payable.

Section 2. Periodic and Advance Assessments. The periodic assessments shall be used exclusively to pay for the management improvement and maintenance of the Common Properties, including but not limited to the payment of taxes and insurance thereon and repairs, replacements and additions thereto, except that periodic assessments shall not be used for the cost of construction, reconstruction or replacement of a capital improvement the aggregate cost of which exceeds \$2,500.00. The Board of Directors shall fix the length of period applicable to periodic assessments and the amount of the periodic assessments against each Townhouse and Condominium Unit. The amount of the periodic assessment may be fixed in advance for up to 12 calendar months. The aggregate amount of such periodic assessments fixed at any time shall be the amount determined by the Board of Directors to be required during the time for which the assessments are fixed for the management, improvement and maintenance of the Common Properties, together with any reserves which the Board of Directors determines to be necessary or desirable to provide for anticipated future expenditures for such purposes. Upon the purchase of a Townhouse or Condominium Unit, whether from the Trustee or from any other Owner, the purchaser shall pay to the Association an advance assessment equal to 3 months' periodic assessments, at the rate prevailing at the time of purchase, which advance assessments shall be held as a reserve by the Association for expenses to be paid out of periodic assessments. Upon the sale of a Townhouse or Condominium Unit by an Owner other than the Trustee, the advance assessment previously paid by the seller shall be refunded to him, without interest, provided that the purchaser shall pay to the Association an advance deposit for such Townhouse or Condominium Unit equal to 3 months' periodic assessments at the rate then prevailing.

Section 3. Special Assessments for Capital Improvements. In addition to the periodic and advance assessments authorized by Section 2 hereof, the Association may levy in any year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or replacement of a capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, the aggregate cost of which exceeds \$2,500.00, with the assent of two-thirds of the vote of Members who are voting in person or by proxy at a meeting duly called for the purpose, written notice of which shall be sent to all Members at least 30 days in advance and shall set forth the purpose of the meeting.

Section 4. Basis for Assessments. All assessments, periodic, advance and special, shall be levied against Townhouses and Condominium Units as hereinafter set forth. Assessments shall be levied against all Townhouses and Condominium Units except those which are in the course of construction and have not been substantially completed. Townhouses and Condominium Units shall become assessable as of the first day of the month following the month in which construction is substantially completed. All assessments shall be equal for each Townhouse. All assessments shall be equal for each Condominium Unit. Each assessment against one Condominium Unit shall be 80% of each assessment against one Townhouse, so that the ratio of each assessment against one Townhouse to each assessment against one Condominium Unit shall be 125 to 100, or 5 to 4.

Section 5. Due Dates. The periodic assessments provided for herein shall be due and payable on the first day of each month or other applicable period, or at such other times as the Board of Directors shall determine. The due date of any special assessment under Section 3 hereof shall be fixed in the resolution authorizing such assessment.

Section 6. Duties of the Board of Directors. The Board of Directors shall prepare a roster of the properties and the assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of each assessment shall be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association. If any assessment is not paid when due, then such assessment shall be deemed delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Townhouse or Condominium Unit in respect of which the assessment was levied. The person who is the Owner of each Townhouse and Condominium Unit shall have a personal obligation to pay all assessments which become due and payable at any time that such person is such Owner.

If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the due date at the rate of 7 percent per annum, and the Association may bring an action for the amount of such assessment against the Owner personally obligated to pay the same, or an action to foreclose the lien against the Townhouse or Condominium Unit in respect of which such assessment was levied, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 8. Subordination of the Lien to Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Townhouse or Condominium Unit.

ARTICLE VII

THE ASSOCIATION

Section 1. Membership. The Developer and every person who is an Owner shall be a member of the Association ("Member"), provided that any such person or entity who holds title to the interest of an owner merely as security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners except that prior to April 30, 1977, the Developer shall be the Class B member. Class A members shall be entitled to one vote for each Townhouse and 4/5 of a vote for each Condominium Unit in which they hold an interest. When more than one person holds such interest, all such persons shall be Members, and the vote for such Townhouse or Condominium Unit shall be exercised as they among themselves determine.

Class B. The Class B member shall be the Developer. The Class B member shall be entitled to that number of votes equal to four times the sum of

(i) the excess of 210 over the number of Townhouses owned by Class A Members, plus

(ii) 4/5 of the excess of 288 over the number of Condominium Units owned by Class A Members.

Class B membership shall cease on April 30, 1977, at which time the Developer shall become a Class A member with respect to any Townhouse or Condominium Unit then owned by the Trustee.

Section 3. Board of Directors. The Board of Directors shall be elected by the Members in accordance with the Articles of Incorporation and By-laws of the Association, subject, however, to the right of the Developer to designate those persons who shall act as Directors prior to the first annual meeting of the Association. The Board of Directors shall direct and administer the Common Properties in accordance with the terms and provisions of this Declaration and the Articles of Incorporation and By-laws of the Association.

Section 4. Board Liability. The directors from time to time constituting the Board of Directors of the Association shall not be liable to the Members for any mistake of judgment or for any act or omission to act committed in good faith as such directors.

Section 5. Governing Law. In all other respects, the Association, its directors, officers, and members shall be governed by the Illinois General Not-for Profit Corporation Act.

ARTICLE VIII

EASEMENT FOR EMERGENCY VEHICLES: TRAFFIC CONTROL

Section 1. Easement for Emergency Vehicles. All fire, police, ambulance, civil defense and other emergency vehicles shall have an easement over all roads and drives in the Properties for access to all structures in the Properties.

Section 2. Traffic Control. The City of Elmhurst shall have the right at any time to assume the full police regulation and traffic control of all streets in the Common Properties, but shall not be obligated to do so.

ARTICLE IX

RIGHTS OF DEVELOPER

During the period ending April 30, 1977, the Developer shall have the right to reasonable use of the Common Properties, without charge, in connection with the construction, advertising, promotion and sale of Townhouses and Condominium Units.

ARTICLE X

ENCROACHMENTS

If any of the Common Properties encroaches upon any Townhouse or Condominium structure situated on the Properties, or if any Townhouse or Condominium structure on the Properties encroaches upon any of the Common Properties, there shall be deemed to be mutual easements in favor of the respective Owners of any such Townhouse or Condominium Unit and the Owner of the Common Properties to the extent of the encroachments so long as the same shall exist.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration; Amendment. The easements, covenants and restrictions in this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of 50 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The easements, covenants and restrictions in this Declaration may be amended:

- (i) by the execution of a Supplemental Declaration by Trustee which may only add to the Common Properties, or
- (ii) in any other respect, by an instrument signed by Members who have not less than two-thirds of the votes in the Association, agreeing to change said easements, covenants and restrictions in whole or in part, which amendment shall be effective 6 months after it has been recorded, provided that written notice of the proposed amendment is sent to every Member at least 90 days in advance of any action taken, and provided further that prior to May 1, 1977, no such amendment shall reduce the Owners' easements described in Article V, change the basis for assessments under Article VI reduce the rights of the Owners under Article VII, or change the provisions for amending this Declaration under Article XI.

Section 2. Notices. Any notices required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Title in Trust. In the event title to any Townhouse or Condominium Unit is conveyed to a land title holding trustee pursuant to a trust agreement which provides that all powers of management, operation and control of such Townhouse or Condominium Unit remain vested in the beneficiary or beneficiaries of such trust, then the beneficiary or beneficiaries of such trust shall be the Member with respect to such Townhouses or Condominium Unit, and shall be responsible for payment of the assessments provided for in this Declaration, and such land title holding trustee shall not be personally liable for payment of any such assessment. The amount of any assessment shall continue to be a charge or lien upon the Townhouse or Condominium Unit and the beneficiary or beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Townhouse or Condominium Unit.

Section 5. Severability; Perpetuities. The invalidity of any of the provisions hereof shall not affect the validity of any other provisions hereof. If any provision hereof would otherwise violate the rule against perpetuities or any other law imposing time limits then such provision shall remain in effect no longer than until 21 years after the death of the last survivor of the now living descendants of Joseph P. Kennedy and Rose Kennedy of Hyannis Port, Massachusetts.

Section 6. Personal Liability. This Declaration is executed by the Trustee solely as Trustee as aforesaid, and not personally, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the covenants and conditions to be performed hereunder by the Trustee are undertaken by it solely as Trustee as aforesaid, and no personal liability shall be asserted or enforceable against the Trustee by reason of any of the provisions contained in this Declaration.

IN WITNESS WHEREOF, NATIONAL BOULEVARD BANK OF CHICAGO, as Trustee under Trust Agreement dated May 26 1969 and known as Trust No. 3133 has authorized these presents to be signed by its Vice President and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, this 14th day of July, 1971.

By _____
Vice President

ATTEST:

Assistant Secretary